DIRECTOR-GENERAL OF INLAND REVENUE

v.

DR. AKEF MUHAMMAD ASADULLAH QUAZI

HIGH COURT MALAYA, KUALA LUMPUR
HARUN HASHIM J
[TAX APPEAL NO. A4/83]
31 DECEMBER 1986

REVENUE LAW: *Income Tax - Appeal against deciding order of the Special Commissioners of Income Tax in revoking the additional notice of assessment - Whether taxpayer resident or non-resident during relevant period - Income Tax Act 1967 - Section 7(1)(b) - Whether appeal should be allowed.*

This was an appeal by the Revenue against the Deciding Order of the Special Commissioners of Income Tax in revoking the Additional Notice of Assessment for the year of assessment 1979 issued on the respondent/taxpayer. The taxpayer, a citizen of Bangladesh, arrived in this country for the first time on 1 October 1978 to take up appointment at Universiti Teknologi Malaysia. In April 1979 he took his family to Singapore for a holiday. Apart from that visit to Singapore for 4 days, the taxpayer remained in Malaysia throughout the material time.

The taxpayer was assessed to income tax for the year of assessment 1979 on the income he earned in 1978 amounting to RM200.29. By Notice of Additional Assessment, his income tax liability was increased to RM3,902.80. The Revenue had revised his income tax liability on the ground that the taxpayer was a **non-resident** and therefore liable to pay income tax at 40% of the income he earned in 1978. The taxpayer appealed to the Special Commissioners on the ground that he was a resident and the original assessment was correct.

The Special Commissioners revoked the Additional Assessment. The Revenue appealed against that to the High Court.

Held:

[1] The dispute here arises out of the interpretation of s. 7(1)(b) of the Income Tax Act 1967. What para. (b) of s. 7(1) means is that if the taxpayer is resident in the country for less than 6 months (182 days) during the basis year, then he may be treated as being a resident, if he can show continuous residence of 6 months either with the year before the basis year or with the year following the basis year.

[2] In the instant case, the taxpayer was resident in Malaysia for 3 months in 1978. He obviously cannot show continuous residence of 6 months with 1977 because he arrived in this country in October 1978. He can, however, show continuous residence of 6 months with 1979 because he was in continuous residence of 6 months from October 1978 to April 1979 having left for Singapore only on 12 April 1979.

[3] The interpretation of s. 7(1)(b) by the Special Commissioners was correct.

[Appeal dismissed with costs. Deciding Order of the Special Commissioners confirmed.]

Legislation referred to:
Income Tax Act 1967, s. 7(1)(a), (b)

For the appellant - Abdul Hamid Mohamed, SFC
For the respondent - in person

JUDGMENT

Harun J:

This is an appeal by the Revenue against the Deciding Order of the Special Commissioners of Income Tax in revoking the Additional Notice of Assessment for the year of assessment 1979 issued on the respondent (Taxpayer).

The Taxpayer is a citizen of Bangladesh. He taught at the University of Wales, Cardiff in the United Kingdom. On 1 October 1978 he arrived in this country for the first time to take up appointment at Universiti Teknologi Malaysia. In April 1979 he took his family to Singapore for a holiday. Apart from that visit to Singapore for 4 days, the Taxpayer remained in Malaysia throughout the material time.

By a Notice of Assessment dated 22 September 1979 he was assessed to income tax for the year of assessment 1979 on the income he earned in 1978 amounting to RM220.29. By Notice of Additional Assessment dated 1 December 1979 for the year of assessment 1979, his income tax liability was increased to RM3,902.80. The Revenue had revised his income tax liability on the ground that the Taxpayer was a **non-resident** and therefore liable to pay income tax at 40% of the income he earned in 1978. He appealed to the Special Commissioners on the ground that he was a resident and the original assessment was correct.

The Special Commissioners in revoking the additional assessment held:

(i) section 7(1)(b) is an extension of s. 7(1)(a) in cases where a period of 6 months presence in Malaysia occurs but overlaps two basis years as in the instant appeal and the intention is to ensure that so long as the taxpayer is continuously in Malaysia for a period of six months he is resident whether it be within one basis year (s. 7(1)(a)) or two overlapping basis years which continue from one to the other pursuant to s. 7(1)(b).

(ii) section 7(1)(b) of the Act is badly drafted.

The Revenue disagrees.

The question before the Special Commissioners was:

> Whether the respondent was in Malaysia in basis year 1978 for the particular year of assessment 1979 for the purpose of para. (b) of sub-section (1) of s. 7 of the Income Tax Act 1967.

The Taxpayer was in this country for only 92 days during 1978 (1 October 1978 to 31 December 1978) and being less than 182 days, s. 7(1)(a) does not apply.

The dispute here arises out of the **interpretation** of s. 7(1)(b). For ease of reference, I would set out the relevant sub-section as follows:

(1) For the purpose of this Act, an individual is resident in Malaysia for the basis year for a particular year of assessment if:

(b) he is in Malaysia in that basis year for a period of **less than** 182 days,

And

that period forms part of a period of **more than** 182 **consecutive days** throughout which:

(i) he is in Malaysia in the basis year for the year of assessment immediately preceding that particular year of assessment,

Or

(ii) in the basis year for the year of assessment immediately following that particular year of assessment.

Translated into practical terms, what the paragraph means is that if the taxpayer is resident in the country for less than 6 months (182 days) during the basis year, then he may be treated as being a resident, if he can show continuous residence of 6 months either with the year before the basis year or with the year following the basis year. In the instant case, the Taxpayer was resident in Malaysia for 3 months in 1978. He obviously cannot show continuous residence of 6 months with 1977 because he arrived in this country in October 1978. He can, however, show continuous residence of 6 months with 1979 because he was in continuous residence of 6 months from October 1978 to April 1979 having left for Singapore only on 12 April 1979.

I accordingly hold that the interpretation of s. 7(1)(b) by the Special Commissioners is correct. I would not, however, say that the provision is badly drafted. The appeal is dismissed with costs and the Deciding Order of the Special Commissioners is confirmed.

Also found at [1987] 1 CLJ 184